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OFFICE OF PETITIONS

In re Application of	:	
Hartwig Ohmstede	:	
Application No. 09/720,239	:	DECISION ON PETITION
Filed: 02/12/2001	:	
Attorney Docket No. 449122001400	:	

This is a decision on the renewed petition under 37 CFR 1.181, filed March 21, 2003, and supplemented on December 1, 2005, and January 8, 2007, to withdraw the holding of abandonment for the above-identified application. The application file was recently forwarded to the Office of Petitions for a decision on the merits. The Office promptly reviewed the petition upon its receipt of the file. The Office sincerely apologizes for the delay.

This application became abandoned for failure to pay the issue fee timely as required by the Notice of Allowance, mailed March 25, 2002. On August 15, 2002, the Office mailed a Notice of Abandonment. On September 26, 2002, applicant submitted a petition to withdraw the holding of abandonment, which was dismissed by the decision of January 23, 2003. On March 21, 2003, applicant filed the present renewed petition, which was supplemented on December 1, 2005, and January 8, 2007.

The record indicates that on June 14, 2002, applicant submitted the Part B - Fee(s) Transmittal in response to the Notice of Allowance. Applicant checked box 4b on the Part B - Fee(s) Transmittal, authorizing the Office to charge the required fee(s), or credit any overpayment, to a Deposit Account, but did not indicate the Deposit Account Number on the Transmittal. The Office notes that the application file contained a general authorization, filed prior to the mailing of the Notice of Allowance, to charge any additional fees that may be required, or credit any overpayment to Deposit Account No. 03-1952.

Applicant asserted that the previously filed general authorization in combination with the checked authorization box on the Part B - Fee(s) Transmittal met the requirements of 37 CFR 1.25. Applicants requested that the Office withdraw the holding of abandonment because applicant submitted a timely and proper authorization to charge the issue fee to Deposit Account No. 03-1952.

Pursuant to 37 CFR 1.311(b)(2), as it existed on June 14, 2002, the submission of a completed Part B - Fee(s) Transmittal form operated as a request to charge the issue fee to any deposit account identified in a previously filed general authorization to charge fees. This interpretation was made clear in the final rule creating 37 CFR 1.311(b)(2), which indicated:

Where an attempt is made to pay the issue fee but an incorrect amount is submitted, 1.311(b)(1), or where the Office's issue fee transmittal form (currently PTOL-85(B)) is completed by applicant and submitted, 1.311(b)(2), in reply to a notice of allowance, an exception will be made. Such submissions will operate as a request to charge the issue fee to any deposit account identified in a previously filed authorization to charge fees, 1.311(b).

The limitation on authorization to charge issue fees to a deposit account under 1.311(b) will apply only where a Notice of Allowance requiring the issue fee has been mailed on or after the date that is 60 days after publication in the Federal Register.

65 Fed. Reg. 54603, 54647 (September 8, 2000).

Specifically, the preamble of newly created 37 CFR 1.311, effective September 8, 2000, stated: "Where it is clear that an applicant actually intends to pay the issue fee such as by ... completing the issue fee transmittal form provided by the Office with the notice of allowance, a general authorization to pay fees or a specific authorization to pay the issue fee, submitted prior to the mailing of a notice of allowance, will be allowed to act a payment of the correct issue fee."

In view of above, the petition to withdraw the holding of abandonment is **GRANTED**. The application is hereby restored to pending status. The Office will charge the \$1,280.00 issue fee to Deposit Account No. 03-1952, as authorized.

The application file is being forwarded to the Office of Patent Publications for issuance of a patent.

Telephone inquiries concerning the issuance of the application into a patent should be directed to the Office of Patent Publication, Customer Service at (571) 272-4200. Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

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